

AMENDED IN SENATE MAY 31, 2012  
AMENDED IN ASSEMBLY MARCH 22, 2011  
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 178**

---

**Introduced by Assembly Members Gorell and Williams Ma**

January 24, 2011

---

~~An act to amend Sections 1320 and 12022.1 of, and to add Section 1318.2 to, the Penal Code, relating to county jails. An act to amend Section 24214 of the Education Code, relating to state teachers' retirement.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 178, as amended, Gorell. ~~County jail: release pursuant to federal court order. State teachers' retirement.~~

*The Teachers' Retirement Law limits the amount of postretirement compensation that may be earned in specified types of employment by a retired member of the Defined Benefit Program without a reduction in the retirement benefits of the member. That law provides exemptions from this limit and until June 30, 2012, specifies that the limitation provisions do not apply to compensation earned by a member retired for service who has returned to work after retirement and, for at least 12 consecutive months, has not performed specified activities.*

*This bill would extend the operation of that exemption until June 30, 2013. The bill also would exempt from the earnings limitation, until June 30, 2013, compensation paid to a retired member who has returned to work after the date of retirement as a trustee, administrator, or fiscal adviser appointed pursuant to specified provisions by the Superintendent of Public Instruction, the Board of Governors of the Community*

*Colleges, or a county superintendent of schools to address academic or financial weaknesses in a school district.*

~~Under existing law, a defendant in a criminal case shall not be released from custody under his or her own recognizance until he or she files a signed release agreement that includes the defendant's promise to appear at all times and places as ordered by the court where the charge is pending, to obey conditions imposed by the court, to not depart the state without leave of the court, to waive extradition if the defendant fails to appear, and an acknowledgment that the defendant has been informed of the consequences and penalties applicable to a violation of the conditions of release.~~

~~This bill would require a defendant who is being released prior to sentencing by county jail personnel, pursuant to a court order or policy mandating the release of inmates, to sign a release agreement with the same requirements as those pertaining to a defendant who is released under his or her own recognizance, including the defendant's promise to appear at the time and place he or she is given in writing by the jail personnel at the time of release.~~

~~Existing law provides that a person who has been released pursuant to the above agreement and who fails to appear, as specified, is guilty of a misdemeanor if the underlying charge or conviction is a misdemeanor, or if the underlying charge or conviction is a felony, is guilty of a felony, punishable by imprisonment in state prison or county jail, or a fine not exceeding \$5,000, or both that imprisonment and fine.~~

~~This bill would apply these same penalties to someone who fails to appear after being released prior to sentencing from a county jail pursuant to a court order or policy mandating the release of inmates. Because this bill would create new crimes, it would impose a state-mandated local program.~~

~~Existing law imposes a penalty enhancement of 2 additional years in state prison, to be served consecutively to any other term, for a person arrested for a felony offense alleged to have been committed while the person was released from custody on bail or on his or her own recognizance prior to the judgment becoming final.~~

~~This bill would apply this 2-year penalty enhancement to a person arrested for a felony offense alleged to have been committed while the person was released prior to sentencing from a county jail pursuant to a court order or policy mandating the release of inmates.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~yes~~-no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 24214 of the Education Code, as amended  
2     by Section 25 of Chapter 703 of the Statutes of 2011, is amended  
3     to read:

4     24214. (a) A member retired for service under this part may  
5     perform the activities identified in subdivision (a) or (b) of Section  
6     22119.5, or subdivision (a) or (b) of Section 26113, as an employee  
7     of an employer, as an employee of a third party, or as an  
8     independent contractor within the California public school system,  
9     but the member shall not make contributions to the retirement fund  
10    or accrue service credit based on compensation earned from that  
11    service. The employer shall maintain accurate records of the  
12    earnings of the retired member and report those earnings monthly  
13    to the system and retired member as described in Section 22461.

14    (b) If a member is retired for service under this part, the rate of  
15    pay for service performed by that member as an employee of the  
16    employer, as an employee of a third party, or as an independent  
17    contractor shall not be less than the minimum, nor exceed that paid  
18    by the employer to other employees performing comparable duties.

19    (c) A member retired for service under this part shall not be  
20    required to reinstate for performing the activities identified in  
21    subdivision (a) or (b) of Section 22119.5 as an employee of an  
22    employer, as an employee of a third party, or as an independent  
23    contractor within the California public school system.

24    (d) A member retired for service under this part may earn  
25    compensation for performing activities identified in subdivision  
26    (a) or (b) of Section 22119.5 in any one school year up to the  
27    limitation specified in subdivision (f) as an employee of an  
28    employer, as an employee of a third party, or an independent  
29    contractor, within the California public school system, without a  
30    reduction in his or her retirement allowance.

(e) (1) The postretirement compensation limitation provisions set forth in this section are not applicable to compensation earned by a member retired for service under this part who has returned to work after the date of retirement and, for a period of at least 12 consecutive months, has not performed the activities identified in subdivision (a) or (b) of Section 22119.5 as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system. For the purpose of this paragraph, the period of 12 consecutive months shall begin no earlier than the effective date of the member's most recent retirement.

(2) The postretirement compensation limitation provisions set forth in this section are not applicable to compensation earned for the performance of the activities described in subdivision (a) for which the employer is not eligible to receive state apportionment or to compensation that is not creditable pursuant to Section 22119.2.

(f) The limitation that shall apply to the compensation for performance of the activities identified in subdivision (a) or (b) of Section 22119.5 by a member retired for service under this part either as an employee of an employer, an employee of a third party, or as an independent contractor shall, in any one school year, be an amount calculated by the board each July 1 equal to twenty-two thousand dollars (\$22,000) adjusted by the percentage change in the average compensation earnable of active members of the Defined Benefit Program, as determined by the system, from the 1998–99 fiscal year to the fiscal year ending in the previous calendar year.

(g) If a member retired for service under this part earns compensation for performing activities identified in subdivision (a) or (b) of Section 22119.5 in excess of the limitation specified in subdivision (f), as an employee of an employer, as an employee of a third party, or as an independent contractor, within the California public school system, and if that compensation is not exempt from that limitation under subdivision (e) or any other provisions of law, the member's retirement allowance shall be reduced by the amount of the excess compensation. The amount of the reduction may be equal to the monthly allowance payable but shall not exceed the amount of the annual allowance payable

1 under this part for the fiscal year in which the excess compensation  
2 was earned.

3 *(h) The limitation specified in this section is not applicable to*  
4 *compensation paid to a member retired for service under this part*  
5 *who has returned to work after the date of retirement as a trustee,*  
6 *administrator, or fiscal adviser appointed by the Superintendent*  
7 *of Public Instruction, the Board of Governors of the Community*  
8 *Colleges, or a county superintendent of schools to address*  
9 *academic or financial weaknesses in a school district pursuant to*  
10 *any of the following provisions:*

11 *(1) Section 41320.1.*

12 *(2) Article 2 (commencing with Section 42122) of Chapter 6 of*  
13 *Part 24 of Division 3 of Title 2.*

14 *(3) Article 3.1 (commencing with Section 52055.57) of Chapter*  
15 *6.1 of Part 28 of Division 4 of Title 2.*

16 *(4) Section 84040.*

17 *(i) The Superintendent of Public Instruction, the Chancellor of*  
18 *the Community Colleges, or the county superintendent of schools*  
19 *exercising the exemption pursuant to subdivision (h) shall submit*  
20 *all documentation required by the system to substantiate the*  
21 *eligibility of the retired member for the exemption, including*  
22 *compliance with subdivision (h). The documentation shall be*  
23 *received by the system prior to the retired member's performance*  
24 *of any activity specified in subdivision (a) or (b) of Section 22119.5*  
25 *or subdivision (a) or (b) of Section 26113.*

26 ~~*(h)*~~

27 *(j) The amendments to this section enacted during the 1995–96*  
28 *Regular Session shall be deemed to have become operative on July*  
29 *1, 1996.*

30 ~~*(i) This section shall remain in effect only until June 30, 2012,*~~  
31 ~~*and shall be repealed on January 1, 2013, unless a later enacted*~~  
32 ~~*statute deletes or extends that date.*~~

33 *(k) This section shall become inoperative on June 30, 2013,*  
34 *and, as of January 1, 2014, is repealed, unless a later enacted*  
35 *statute, that becomes operative on or before January 1, 2014,*  
36 *deletes or extends the dates on which it becomes inoperative and*  
37 *is repealed.*

38 *SEC. 2. Section 24214 of the Education Code, as amended by*  
39 *Section 26 of Chapter 703 of the Statutes of 2011, is amended to*  
40 *read:*

1     24214. (a) A member retired for service under this part may  
2 perform the activities identified in subdivision (a) or (b) of Section  
3 22119.5, or subdivision (a) or (b) of Section 26113, as an employee  
4 of an employer, as an employee of a third party, or as an  
5 independent contractor within the California public school system,  
6 but the member shall not make contributions to the retirement fund  
7 or accrue service credit based on compensation earned from that  
8 service. The employer shall maintain accurate records of the  
9 earnings of the retired member and report those earnings monthly  
10 to the system and retired member as described in Section 22461.

11     (b) If a member is retired for service under this part, the rate of  
12 pay for service performed by that member as an employee of the  
13 employer, as an employee of a third party, or as an independent  
14 contractor within the California public school system shall not be  
15 less than the minimum, nor exceed that paid by the employer to  
16 other employees performing comparable duties.

17     (c) A member retired for service under this part shall not be  
18 required to reinstate for performing the activities identified in  
19 subdivision (a) or (b) of Section 22119.5 as an employee of an  
20 employer, as an employee of a third party, or as an independent  
21 contractor within the California public school system.

22     (d) A member retired for service under this part may earn  
23 compensation for performing activities identified in subdivision  
24 (a) or (b) of Section 22119.5 in any one school year up to the  
25 limitation specified in subdivision (f) as an employee of an  
26 employer, as an employee of a third party, or an independent  
27 contractor, within the California public school system, without a  
28 reduction in his or her retirement allowance.

29     (e) The postretirement compensation limitation provisions set  
30 forth in this section are not applicable to compensation earned for  
31 the performance of the activities described in subdivision (a) for  
32 which the employer is not eligible to receive state apportionment  
33 or to compensation that is not creditable pursuant to Section  
34 22119.2.

35     (f) The limitation that shall apply to the compensation for  
36 performance of the activities identified in subdivision (a) or (b) of  
37 Section 22119.5 by a member retired for service under this part  
38 either as an employee of an employer, an employee of a third party,  
39 or as an independent contractor shall, in any one school year, be  
40 an amount calculated by the board each July 1 equal to twenty-two

1 thousand dollars (\$22,000) adjusted by the percentage change in  
2 the average compensation earnable of active members of the  
3 Defined Benefit Program, as determined by the system, from the  
4 1998–99 fiscal year to the fiscal year ending in the previous  
5 calendar year.

6 (g) If a member retired for service under this part earns  
7 compensation for performing activities identified in subdivision  
8 (a) or (b) of Section 22119.5 in excess of the limitation specified  
9 in subdivision (f), as an employee of an employer, as an employee  
10 of a third party, or as an independent contractor, within the  
11 California public school system, the member's retirement  
12 allowance shall be reduced by the amount of the excess  
13 compensation. The amount of the reduction may be equal to the  
14 monthly allowance payable but may not exceed the amount of the  
15 annual allowance payable under this part for the fiscal year in  
16 which the excess compensation was earned.

17 (h) The language of this section derived from the amendments  
18 to the section of this number added by Chapter 394 of the Statutes  
19 of 1995, enacted during the 1995–96 Regular Session, is deemed  
20 to have become operative on July 1, 1996.

21 (i) This section shall become operative on July 1, ~~2012~~ 2013.

22 ~~SECTION 1. Section 1318.2 is added to the Penal Code, to~~  
23 ~~read:~~

24 ~~1318.2. (a) Any defendant released prior to sentencing by~~  
25 ~~county jail personnel pursuant to a court order or policy mandating~~  
26 ~~the release of inmates when the jail facility reaches a certain~~  
27 ~~capacity shall sign a release agreement that includes all of the~~  
28 ~~following:~~

29 ~~(1) The defendant's promise to appear at the time and place the~~  
30 ~~defendant is given in writing by the jail personnel at the time of~~  
31 ~~release.~~

32 ~~(2) The defendant's promise to appear at all times and places~~  
33 ~~the defendant is ordered at subsequent hearings by the court or~~  
34 ~~magistrate and as ordered by any court in which, or any magistrate~~  
35 ~~before whom, the charge is pending.~~

36 ~~(3) The defendant's promise to obey all reasonable conditions~~  
37 ~~imposed by the court or magistrate.~~

38 ~~(4) The defendant's promise not to depart this state without~~  
39 ~~leave of the court.~~

1     ~~(5) Agreement by the defendant to waive extradition if the~~  
2     ~~defendant fails to appear as required and is apprehended outside~~  
3     ~~the State of California.~~

4     ~~(6) The acknowledgment of the defendant that he or she has~~  
5     ~~been informed of the consequences and penalties applicable to~~  
6     ~~violation of the conditions of release.~~

7     SEC. 2.—Section 1320 of the Penal Code is amended to read:

8     1320. (a) Every person who is charged with or convicted of  
9     the commission of a misdemeanor who is released from custody  
10    pursuant to Section 1318 or 1318.2 and who in order to evade the  
11    process of the court willfully fails to appear as required, is guilty  
12    of a misdemeanor. It shall be presumed that a defendant who  
13    willfully fails to appear within 14 days of the date assigned for his  
14    or her appearance intended to evade the process of the court.

15    (b) Every person charged with or convicted of the commission  
16    of a felony who is released from custody pursuant to Section 1318  
17    or 1318.2 and who, in order to evade the process of the court,  
18    willfully fails to appear as required is guilty of a felony and, upon  
19    conviction, shall be punished by a fine not exceeding five thousand  
20    dollars (\$5,000) or by imprisonment in the state prison, or in the  
21    county jail for not more than one year, or by both that fine and  
22    imprisonment. It shall be presumed that a defendant who willfully  
23    fails to appear within 14 days of the date assigned for his or her  
24    appearance intended to evade the process of the court.

25    SEC. 3.—Section 12022.1 of the Penal Code is amended to read:

26    12022.1. (a) For the purposes of this section only:

27    (1) “Primary offense” means a felony offense for which a person  
28    has been released from custody on bail or pursuant to Section 1318  
29    or 1318.2 prior to the judgment becoming final, including the  
30    disposition of any appeal, or for which release on bail or his or her  
31    own recognizance has been revoked. In cases where the court has  
32    granted a stay of execution of a county jail commitment or state  
33    prison commitment, “primary offense” also means a felony offense  
34    for which a person is out of custody during the period of time  
35    between the pronouncement of judgment and the time the person  
36    actually surrenders into custody or is otherwise returned to custody.

37    (2) “Secondary offense” means a felony offense alleged to have  
38    been committed while the person is released from custody for a  
39    primary offense.



1     ~~(b) Any person arrested for a secondary offense which was~~  
2     ~~alleged to have been committed while that person was released~~  
3     ~~from custody on a primary offense shall be subject to a penalty~~  
4     ~~enhancement of an additional two years in state prison which shall~~  
5     ~~be served consecutive to any other term imposed by the court.~~

6     ~~(c) The enhancement allegation provided in subdivision (b)~~  
7     ~~shall be pleaded in the information or indictment which alleges~~  
8     ~~the secondary offense, or in the information or indictment of the~~  
9     ~~primary offense if a conviction has already occurred in the~~  
10    ~~secondary offense, and shall be proved as provided by law. The~~  
11    ~~enhancement allegation may be pleaded in a complaint but need~~  
12    ~~not be proved at the preliminary hearing or grand jury hearing.~~

13    ~~(d) Whenever there is a conviction for the secondary offense~~  
14    ~~and the enhancement is proved, and the person is sentenced on the~~  
15    ~~secondary offense prior to the conviction of the primary offense,~~  
16    ~~the imposition of the enhancement shall be stayed pending~~  
17    ~~imposition of the sentence for the primary offense. The stay shall~~  
18    ~~be lifted by the court hearing the primary offense at the time of~~  
19    ~~sentencing for that offense and shall be recorded in the abstract of~~  
20    ~~judgment. If the person is acquitted of the primary offense the stay~~  
21    ~~shall be permanent.~~

22    ~~(e) If the person is convicted of a felony for the primary offense,~~  
23    ~~is sentenced to state prison for the primary offense, and is convicted~~  
24    ~~of a felony for the secondary offense, any state prison sentence~~  
25    ~~for the secondary offense shall be consecutive to the primary~~  
26    ~~sentence.~~

27    ~~(f) If the person is convicted of a felony for the primary offense,~~  
28    ~~is granted probation for the primary offense, and is convicted of~~  
29    ~~a felony for the secondary offense, any state prison sentence for~~  
30    ~~the secondary offense shall be enhanced as provided in subdivision~~  
31    ~~(b).~~

32    ~~(g) If the primary offense conviction is reversed on appeal, the~~  
33    ~~enhancement shall be suspended pending retrial of that felony.~~  
34    ~~Upon retrial and reconviction, the enhancement shall be reimposed.~~  
35    ~~If the person is no longer in custody for the secondary offense~~  
36    ~~upon reconviction of the primary offense, the court may, at its~~  
37    ~~discretion, reimpose the enhancement and order him or her~~  
38    ~~recommitted to custody.~~

39    ~~SEC. 4. No reimbursement is required by this act pursuant to~~  
40    ~~Section 6 of Article XIII B of the California Constitution because~~

1 ~~the only costs that may be incurred by a local agency or school~~  
2 ~~district will be incurred because this act creates a new crime or~~  
3 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
4 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
5 ~~the Government Code, or changes the definition of a crime within~~  
6 ~~the meaning of Section 6 of Article XIII B of the California~~  
7 ~~Constitution.~~

O